

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JOHNNY POTTS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO. 3:06cv124-WHA
)	
DYNCORP INTERNATIONAL, LLC, et al.,)	
)	
Defendants.)	

ORDER

On September 11, 2006, the Defendant Dyncorp International, LLC, filed a Motion to Amend its Answer to include the additional affirmative defense of lack of subject matter jurisdiction (Doc. #27). Upon consideration of that motion, the court entered an order (Doc. #28) noting that subject matter jurisdiction is an issue to be resolved promptly, since the court has no authority to act in any way if there is no subject matter jurisdiction, and ordering the Defendant to file a brief on the issue because, if there is no subject matter jurisdiction, the case should be dismissed rather than being allowed to continue with the jurisdictional issue unresolved. The Defendant did so. Having made clear to the parties that this case would not proceed further until the jurisdictional issue was resolved, the court gave the Plaintiffs a period of time to respond. The Plaintiffs have now filed a response which does not address the jurisdictional issue at all, but merely says that jurisdiction may be raised at any stage in proceedings, and that they do not object to the amendment but do not agree that there is no subject matter jurisdiction and will address the issue at a later time (Doc. #38).

Since it is the Plaintiffs' burden to show that this court has jurisdiction over this case, and since the Plaintiffs failed to respond in any way to the jurisdictional issue after having been given the opportunity to do so, the court could very easily simply accept the brief of the Defendant as accurately stating the law and dismiss the case at this time for lack of subject matter jurisdiction. However, the court will give the Plaintiffs an opportunity to do what they should have done by October 5, and attempt to carry its burden of showing that jurisdiction exists. Therefore, it is hereby

ORDERED that the Plaintiffs are given **until October 16, 2006**, to file a brief on the jurisdictional issue in response to the Defendant's Motion to Amend the Answer. The court will take the matter under submission at that time, and if the Plaintiffs fail to persuade the court that there is subject matter jurisdiction, the case will be dismissed.

DONE this 10th day of October, 2006.

/s/ W. Harold Albritton

W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE